



## **Headquarters Policy Flash**

**FLASH 00-01**

**DATE:** January 14, 2000  
**TO:** Distribution  
**FROM:** Office of Procurement and Assistance Policy, MA-51  
Office of Procurement and Assistance Management

**SUBJECT:** Federal Acquisition Circular (FAC) 97-15

**SUMMARY:** This Policy Flash transmits a summary of the eleven items included in FAC 97-15, which was published in the Federal Register on December 27, 1999, at 64 FR 72414. The effective date for each item is noted below in the summary - each rule is applicable to solicitations issued on or after the rule's effective date. A companion document, the Small Entity Compliance Guide (SECG) was published with this FAC. Both the FAC and the SECG are available via the Internet at <http://www.arnet.gov/far>. Contracting personnel should review the details of each item in the full text of the FAC.

## **FLASH 00-01**

*Please note: If you have comments on the interim rule published in item 3 - **Contract Bundling**, please forward them to Robert Webb, MA-51, no later than **February 16, 2000** for a consolidated DOE response.*

**1. Pollution Control and Clean Air and Water (Effective February 25, 2000)**

This final rule amends the FAR to remove Subpart 23.1, Pollution Control and Clear Air and Water; the provision at 52.223-1, Clean Air and Water Certification; and the clause at 52.223-2, Clean Air and Water. This amendment eliminates the burden on offerors to certify that they do not propose to use a facility for performance of the contract that is on the Environmental Protection Agency's (EPA) "List of Violating Facilities." Contracting officers will use the "GSA List of Parties Excluded from Federal Procurement and Nonprocurement Programs" (GSA List) to ensure that they do not award contracts to ineligible offerors. Excluded parties whose ineligibility is limited by reason of a Clean Air Act (CAA) or Clean Water Act (CWA) conviction are identified by the facility and conviction listing, the Cause and Treatment Code "H" annotation, in the GSA List. Internet access to the GSA List is available at <http://www.epls.arnet.gov>. These FAR revisions do not change long-standing policy that a contracting officer cannot award a contract if performance of the contract would be at a facility convicted of a CAA or CWA violation unless the EPA has certified that the facility has corrected the cause giving rise to the conviction.

**2. Foreign Acquisition (Part 25 Rewrite) (Effective February 25, 2000)**

This final rule amends FAR Parts 1, 2, 5, 6, 9, 12, 13, 14, 15, 17, 25, 36, and 52 to clarify policies and procedures concerning foreign acquisition and to rewrite Part 25 in plain language.

The revision includes an overview of the Part at FAR 25.001; a matrix at FAR 25.002 to explain when the various subparts apply; a consolidation of all definitions in FAR 25.003; changes in FAR 25.502 which affect evaluations under the Buy American Act and NAFTA and the Trade Agreements Act; and evaluation examples at FAR 25.504.

Acquisition Letter 96-05, dated May 10, 1996, remains in effect; however, contracting personnel will need to adapt FAR references in the Acquisition Letter to the revised FAR coverage. The Office of Procurement and Assistance Policy is in the process of updating AL 96-05 and will reissue as soon as possible. Any questions regarding this AL should be referred to Robert Webb at (202) 586-8264.

## **FLASH 00-01**

3. **Contract Bundling** *(Effective December 27, 1999)*

This interim rule amends the FAR to implement Sections 411-417 of the Small Business Reauthorization Act of 1997. Sections 411-417 amend Title 15 of the U.S.C. to define “contract bundling,” and to require agencies to avoid unnecessary bundling that precludes small business participation in the performance of Federal contracts.

The interim rule establishes several new requirements, including:

- ◆ consideration of the effect of “bundling” in written acquisition plans (FAR 7.105);
- ◆ justification of any “bundling” (FAR 7.107);
- ◆ market research focused on the necessity of “bundling” (FAR 10.001);
- ◆ Evaluation factors relating to offerors’ past performance in attaining small business goals (FAR 15.304); and
- ◆ consideration in the “structure” of solicitations (FAR 15.305).

4. **Deobligation Authority** *(Effective February 25, 2000)*

This final rule revises FAR 4.804-5 and 42.302 to establish deobligation of excess funds as one of the contract administration functions normally delegated to the contract administration office. In addition, the rule includes editorial revisions for plain language purposes.

5. **Transition of the Financial Management System Software Program** *(Effective February 25, 2000)*

This final rule amends the FAR to delete Subpart 8.9, Financial Management Systems Software Mandatory Multiple Award Schedules Contracts Program.

6. **Document Availability** *(Effective December 27, 1999)*

This final rule amends the Federal Acquisition Regulation (FAR) at 11.201(d) and 52.211-2 to update how the public may obtain Department of Defense specifications and standards.

7. **SBA’s 8(a) Business Development Program** *(Effective December 27, 1999)*

The interim rule published as Item III of FAC 97-12 is converted to a final rule without changes. The rule implements changes made in the Small Business Administration's 8(a) Business Development (8(a)BD) Program regulation, contained in 13 CFR Parts 121, 124, and 134, regarding the eligibility procedures for admission to the 8(a)BD and contractual assistance programs.

## FLASH 00-01

8. **Special Simplified Procedures for Purchases of Commercial Items in Excess of the Simplified Acquisition Threshold** *(Effective December 27, 1999)*

This final rule amends FAR Subpart 13.5 to implement Section 806 of the National Defense Authorization Act for Fiscal Year 2000 (Pub. L. 106-65). Section 806 amends Section 4202(e) of the Clinger-Cohen Act of 1996 (Divisions D and E of Pub. L. 104-106; 110 Stat. 654; 10 U.S.C. 2304 note) to extend, through January 1, 2002, the expiration of the test of special simplified procedures for purchases of commercial items greater than the simplified acquisition threshold, but not exceeding \$5,000,000.

9. **Review of Award Fee Determinations (Burnside-Ott)** *(Effective February 25, 2000)*

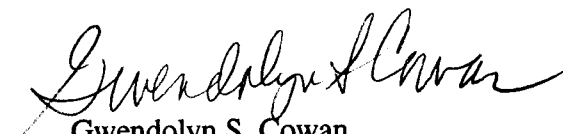
This final rule amends the Federal Acquisition Regulation (FAR) to implement rulings of the United States Court of Appeals and the United States Court of Federal Claims. The rulings state that the Contract Disputes Act applies to all disputes arising under Government contracts, unless a more specific statute provides for other remedies. FAR 16.405-2(a) is amended to delete the statement that award fee determinations are not subject to the disputes clause of the contract and to add a statement that such determinations and the methodology for determining award fee are unilateral decisions made solely at the discretion of the government.

10. **Nondisplacement of Qualified Workers--Commercial Items** *(Effective February 25, 2000)*

This final rule amends FAR 52.212-5(c) to add the clause entitled 52.222-50, Nondisplacement of Qualified Workers, to the list of clauses that the contracting officer may incorporate by reference when applicable.

11. **Technical Amendments** *(Effective December 27, 1999)*

Amendments are made at sections 2.101, 5.205, 14.201-6, 15.208, 19.702, 32.503-6, 33.213, 36.104, 42.203, 52.215-1, 52.228-14, and 52.236-25 to update references and make editorial changes.

  
Gwendolyn S. Cowan  
Director